S.B.Civil Writ Petition No.3032/2007

Haria.
vs.
State of Rajasthan and others.

Date : 6.7.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.HS Sidhu, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner has challenged the order of Tehsildar dated 17.1.2007 by which the petitioner's mutation was cancelled.

According to learned counsel for the petitioner, though the order under challenge is appealable but since in this case, the principles of natural justice have been violated as no notice before cancellation was given to the petitioner, therefore, the petitioner can approach this Court under Article 226 of the Constitution of India for quashing the order dated 17.1.2007. Learned counsel for the petitioner also submitted that the order is wholly without jurisdiction, therefore, the writ petition is maintainable.

Learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others reported in (1998) 8 SCC 1 wherein the Hon'ble Apex Court held that where the writ petition seeks enforcement of any of the fundamental rights, where there is violation of principles of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged, then the alternate remedy is no bar against exercising power under Article 226 of the Constitution of India.

So far as the law laid down by the Hon'ble Supreme Court is concerned, it is settled law that the alternate remedy is not bar against the jurisdiction of the Court but it is a discretion on the basis of which the Court can refuse to exercise the writ jurisdiction.

In this case, the authority – Tehsildar (Land Records) passed the order of mutation on the basis of the order passed by S.D.M. dated 6.1.2007 and the order purports to have been passed under Section 86(2) of the Act, therefore, the order at the most can be said to be an illegal order. The contention of the petitioner that without affording an opportunity of hearing, the said order was passed by the concerned authority is

concerned, that can be properly examined by the appellate authority from the record. Here the petitioner has not placed on record the copies of the proceedings in which order was passed for opening of mutation in other's name.

This Court is not inclined to entertain the writ petition on the ground of availability of alternate remedy which is a regular way and where remedy available under the Act is not a remedy which can be said to be not an effective remedy.

In view of the above, the present writ petition is dismissed with liberty to the petitioner to challenge the order by preferring appeal.

(PRAKASH TATIA), J.

S.Phophaliya